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AN ACT

RELATING TO WORKERS' COMPENSATION; INCREASING THE ASSESSMENT
ON EMPLOYERS; DISTRIBUTING A PORTION OF THE EMPLOYER
ASSESSMENT TO THE UNINSURED EMPLOYERS' FUND; AMENDING
SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 52-1-9.1 NMSA 1978 (being Laws 2003,
Chapter 258, Section 1) is amended to read:

"52-1-9.1. UNINSURED EMPLOYERS' FUND--WORKERS'
COMPENSATION ADMINISTRATION--ADDITIONAL DUTIES.--

A. The "uninsured employers' fund" is created in
the state treasury. The fund shall be administered by the
workers' compensation administration as a separate account.
The administration shall adopt rules to administer the fund
pursuant to the provisions of this section.

B. The fund shall consist of thirty cents (\$.30)
per employee covered by the Workers' Compensation Act on the
last working day of each quarter for the fee assessed against
employers pursuant to Section 52-5-19 NMSA 1978 and all
income derived from investment of the fund. The fund shall
also consist of any other money appropriated, distributed or
otherwise allocated to the fund for the purpose of this
section.

C. Money in the fund is appropriated to the

1 workers' compensation administration to pay workers'
2 compensation benefits to a person entitled to the benefits
3 when that person's employer has failed to maintain workers'
4 compensation coverage because of fraud, misconduct or other
5 failure to insure or otherwise make compensation payments.
6 For purposes of this subsection, a worker who has
7 affirmatively elected not to accept the provisions of the
8 Workers' Compensation Act shall not be eligible for payment
9 of workers' compensation from the uninsured employers' fund.
10 The director may pay reasonable costs of administering the
11 uninsured employers' fund from the fund, but money in the
12 fund shall not be used for administrative costs unrelated to
13 the fund or any activity of the workers' compensation
14 administration other than as provided in this section. The
15 superintendent of insurance shall examine and audit the fund
16 pursuant to the provisions of Chapter 59A, Article 4 NMSA
17 1978.

18 D. The director may authorize payments to a person
19 from the uninsured employers' fund if the injury or cause of
20 incapacity occurs in New Mexico and would be compensable
21 under the Workers' Compensation Act.

22 E. The uninsured employers' fund, by subrogation,
23 has all the rights, powers and benefits of the employee or
24 the employee's dependents against the employer failing to
25 make the compensation payments.

1 F. The uninsured employers' fund, subject to
2 approval of the director, shall discharge its obligations by
3 contracting with an independent adjusting company that is
4 licensed and principally located in New Mexico as prescribed
5 by Section 59A-13-11 NMSA 1978 or Chapter 59A, Article 12A
6 NMSA 1978.

7 G. For the purpose of ensuring the health, safety
8 and welfare of the public, the director or a workers'
9 compensation judge shall:

10 (1) order the uninsured employer to
11 reimburse the uninsured employers' fund for all benefits paid
12 to or on behalf of an injured employee by the uninsured
13 employers' fund along with interest, costs and attorney fees;
14 and

15 (2) impose a penalty against the uninsured
16 employer of not less than fifteen percent nor more than fifty
17 percent of the value of the total award in connection with
18 the claim that shall be paid into the uninsured employers'
19 fund.

20 H. The liability of the state, the workers'
21 compensation administration and the state treasurer, with
22 respect to payment of any compensation benefits, expenses,
23 fees or disbursement properly chargeable against the
24 uninsured employers' fund, is limited to the assets in the
25 uninsured employers' fund, and they are not otherwise liable

1 for any payment.

2 I. The uninsured employers' fund shall be
3 considered a payor of last resort within the workers'
4 compensation system. No other payor liable for payments
5 under the Workers' Compensation Act shall have its
6 liabilities affected or discharged by payments from the
7 uninsured employers' fund. Any payments to workers paid by
8 the uninsured employers' fund shall be subject to subrogation
9 and apportionment to the same extent as payments to an
10 injured worker from a third party tortfeasor.

11 J. In any claim against an employer by the
12 uninsured employers' fund, or by or on behalf of the employee
13 to whom or to whose dependents compensation and other
14 benefits are paid or payable from the uninsured employers'
15 fund, the burden of proof is on the employer or other party
16 in interest objecting to the claim. The claim is presumed to
17 be valid up to the full amount of workers' compensation
18 benefits paid to the employee or the employee's dependents.
19 This subsection applies whether the claim is filed in court
20 or in an adjudicative proceeding under the authority of the
21 workers' compensation administration.

22 K. Nothing in this section shall be construed to
23 extend exclusive remedy protection pursuant to Section 52-1-6
24 or 52-1-9 NMSA 1978 to any employer whose injured worker is
25 paid by the uninsured employers' fund.

1 L. Nothing in this section shall be construed to
2 supersede Section 52-5-10 NMSA 1978."

3 Section 2. Section 52-5-19 NMSA 1978 (being Laws 1987,
4 Chapter 235, Section 52, as amended) is amended to read:

5 "52-5-19. FEE FOR FUNDING ADMINISTRATION--WORKERS'
6 COMPENSATION ADMINISTRATION FUND CREATED.--

7 A. Beginning with the calendar quarter ending
8 September 30, 2004 and for each calendar quarter thereafter,
9 there is assessed against each employer who is required or
10 elects to be covered by the Workers' Compensation Act a fee
11 equal to two dollars thirty cents (\$2.30) multiplied by the
12 number of employees covered by the Workers' Compensation Act
13 that the employer has on the last working day of each
14 quarter. At the same time, there is assessed against each
15 employee covered by the Workers' Compensation Act on the last
16 working day of each quarter a fee of two dollars (\$2.00),
17 which shall be deducted from the wages of the employee by the
18 employer and remitted along with the fee assessed on the
19 employer. The fees shall be remitted by the last day of the
20 month following the end of the quarter for which they are
21 due.

22 B. The taxation and revenue department may deduct
23 from the gross fees collected an amount not to exceed five
24 percent of the gross fees collected to reimburse the
25 department for costs of administration.

1 C. The taxation and revenue department shall pay
2 over the net fees collected to the state treasurer to be
3 deposited by him in a fund hereby created and to be known as
4 the "workers' compensation administration fund".
5 Expenditures shall be made from this fund on vouchers signed
6 by the director for the necessary expenses of the workers'
7 compensation administration; provided that an amount equal to
8 thirty cents (\$.30) per employee of the fee assessed against
9 an employer shall be distributed from the workers'
10 compensation administration fund to the uninsured employers'
11 fund.

12 D. The workers' compensation fee authorized in
13 this section shall be administered and enforced by the
14 taxation and revenue department under the provisions of the
15 Tax Administration Act."

16 Section 3. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2004. _____